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IN THE

Supreme Court of the United States

October Term, 1966

No. 1258

DIANA KEARNY POWELL,

Petitioner,

v.

COMMITTEE ON ADMISSIONS AND GRIEVANCES,

Respondent.

DIANA KEARNY POWELL,

Petitioner,

v.

ALEXANDER HOLTZOFF,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

DIANA KEARNY POWELL
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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that Writs of Certiorari issue to review the judgments of the United States Court of Appeals for the District of Columbia Circuit, entered in Appeal No. 20,181, *Powell v. Committee on Admissions and Grievances*, on January 12, 1967; in Appeal No. 20,544, *Powell v. Holtzoff*, on March 9, 1967.

OPINIONS BELOW

The opinion of the United States District Court for the District of Columbia *In the Matter of a Complaint against Diana Kearny Powell* (RJA 10) (*Powell v. Committee on Admissions and Grievances* in the United States Court of Appeals, No. 20,181) was unreported. The opinion of the United States Court of Appeals is not yet reported. (A-1).

No opinion was entered in connection with the Summary Judgment of the United States District Court for the District of Columbia in Civil Action No. 987-66, *Powell v. Holtzoff.* (RJA 13). (No. 20,544). The United States Court of Appeals entered an Order granting summary affirmance of the judgment of the District Court, which is not yet reported. (A-5).

JURISDICTIONAL STATEMENT

Review is sought on grounds that Petitioner has been denied freedom of speech and the right of petition guaranteed by Amendment One of the Constitution, and the rights of due process of law and equal protection of the laws guaranteed by Amendments V, VII, IX and X, and that the United States Court of Appeals for the District of Columbia Circuit has so far departed from the accepted course of judicial proceedings, and has sanctioned such departure in the United States District Court, as to call for this Court's power of supervision in two judgments, one entered January 12, 1967 in Appeal No. 20,181, *Powell v. Committee on Admissions and Grievances* (A. 1) and the related judgment entered March 7, 1967, in Appeal No. 20,544, *Powell v. Holtzoff.* (A. 5).

This Court has jurisdiction under 28 U.S.C. 1254 (1), and under the Constitution of the United States, Article III, Sec. 2, providing for appellate jurisdiction

in cases arising under the Constitution and laws of the United States.

QUESTIONS PRESENTED

The questions presented are:

1. Does the right to free speech and petition guaranteed by Amendment One of the Constitution extend to a formal pleading addressed to the Attorney General of the United States seeking criminal action against a bank, two lawyers, and two judges? Is an attorney filing such a pleading in proper conservative language, and presenting extensive documentary proof from the record of the allegations, protected under Amendment One from disbarment for professional misconduct in filing the pleading?

2. Is arbitrary denial by the Courts below of judicially noticed records supporting the truth of respondent's allegations of judicial corruption, for which allegations she was disbarred on grounds they were scandalous and false, denial of due process of law and equal protection of the law in violation of Amendments V, VII, IX and X of the Constitution, and departure from usual judicial procedures that would warrant review by this Court?

3. Is the sanctioning by the courts below of the United States Attorney acting as defense counsel in an action in defamation for perjured statements of a witness, volunteered with no question pending and after declining to testify to his judicial acts, such a departure from usual judicial procedures as to warrant review by this Court?

4. Is summary dismissal of an action for defamation, without hearing on appeal, on the ground of judicial privilege, where a genuine question of judicial

privilege was at issue, denial of due process of law and equal protection of the laws in violation of the pertinent Amendments to the Constitution and departure from usual procedures warranting review by this Court?

CONSTITUTIONAL PROVISIONS

Constitution of the United States, Amemdment I:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V:

> No person . . . nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment IX:

> The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Amendment X:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

STATEMENT OF THE CASE

Review is sought of two related judgments of the United States Court of Appeals for the District of Columbia Circuit.

The first, entered January 12, 1967, in Appeal No. 20,181, *Powell v. Committee on Admissions and Grievances* (A. 1), without disbarring in the Court of Appeals, affirmed a judgment of disbarment entered April 7, 1966, in the United States District Court for the District of Columbia. (RJA 10).

The second, entered March 9, 1967, in Appeal No. 20,544, *Powell v. Holtzoff* (A. 5), granted without hearing summary affirmance of dismissal by the United States District Court for the District of Columbia, of an action in defamation for statements made in connection with the first proceeding. (RJA 13)

Petitioner, a member of the Bar of the United States District Court for the District of Columbia, was charged in Misc. 54-65, *In re Diana Kearny Powell* (R-A1), (Appeal No. 20,181, *Powell v. Committee on Admissions and Grievances*) with making false and scandalous statements in a formal complaint, CA 207-65, *Powell v. Katzenbach* (R-A 5-8) seeking criminal action against a bank, two attorneys, and two judges, for fraud. At request of the trial court hearing the disbarment, Respondent filed a trial brief including judicially noticed records corroborating her allegations of misconduct against the judges, and made part of the record on appeal and in this Petition.

Statement of the Case in the Trial Brief, pp. 1-5, shows Respondent's timely Motion to Dismiss and Answer, with reference to supporting pleadings in this and related cases, judicially noticed (RA Appendix A), and detailed analysis of the factual foundation for Respondent's complaint against the two judges (RB Appendix B) are incorporated herein by reference.

On March 18, 1966, the District Court filed a Memorandum finding Respondent guilty and her com-

plaint to the Attorney General about the two judges "without foundation and completely false, and constitute conduct clearly prejudicial to the administration of justice." Respondent was allowed ten days in which to present matters in mitigation

On March 28, 1966, Respondent filed a Motion to set aside this finding as contrary to the evidence and based on prejudice. (R-JA1-7). An Order denying this Motion, and the Court's "Findings and Conclusions," and Order of Disbarment were entered April 7, 1966. (R-JA 8-11). Notice of Appeal was timely filed, April 11, 1966. (R-JA-11).

The constitutional questions, the right of freedom of speech and the right of the people to petition the Government for redress of grievances under Amendment I and of fair trial and of due process and of equal protection of the law under Amendments V and IX were first raised specifically in the Statement of Points on Appeal. However, violation of these rights is latent in this case from the first use of disbarment as blackmail to suppress complaint of a crime.

Judgment of the Court of Appeals entered January 12, 1967, after hearing, likewise ignores the facts of record to affirm the disbarment of the District Court, but suggested the possibility of reinstatement and leaves Appellant a member of its bar. (A. 1).

The second case, *Powell v. Holtzoff*, is a complaint in defamation for perjured testimony, defamatory *per se*, given by the defendant while testifying as a witness in the disbarment trial on January 18, 1966. (RJA-1). The defamatory statement, stating the plaintiff's complaint to the Attorney General in *Powell v. Katzenbach* (RA-5-8), on appeal, 123 U.S. App.

D.C. 250, 359 F. 2d 234 (1965), cert. denied, 394 U.S. 906, rehearing denied, 384 U.S. 967 (1966); was deliberately false, was not responsive to a question and was made after the witness had declined to testify as to his official acts. The defense of truth has not been raised by the defendant in this case at any stage of the proceeding and is presumed to be waived under Rule 12 (h), F.R.Civ. P.

Over the protests of the plaintiff at all stages (RJA-9-11), the defendant has been represented by the United States Attorney, whose Motion for Summary Judgment on the ground of judicial privilege (in the alternative for privilege as a witness) was granted in the District Court (RJA-13), over plaintiff's opposition and Motion to Strike Pleadings filed by the United States Attorney, on the ground of impropriety and conflict of interest, denied July 25, 1966 (RJA-1), Order granting Summary Judgment for the Defendant was entered September 21, 1966. (RJA-13). Notice of Appeal was duly filed September 21, 1966. (RJA-14).

Appellant's Motion in Appeal No. 20,544 to enjoin the United States Attorney from representing the Appellee was denied by the United States Court of Appeals December 2, 1966, (App. 4), and the Motion of Appellee for Summary Affirmance was granted by Order entered March 9, 1967 (A. 5), for which review is sought.

SUMMARY OF ARGUMENT

1. Petitioner is entitled to review because the courts below have flouted basic precedents of justice to deprive her of constitutional rights, including free speech, petition and due process.

II. Affirmance of disbarment deprives Petitioner of free speech and the right of petition through the courts, in violation of due process and a fair trial, and by duress.

III. The sole purpose of this disbarment was to induce by duress suppression of the facts and the right to seek redress for wrongs through petition to the Attorney General, in violation of Amendment I.

IV. Petitioner has been denied due process of law by exclusion of the record proving the truth of her statements from practical consideration by the Court.

V. Summary judgment without hearing on the issue of whether the defamatory *per se* statements were privileged when made as a witness after declining to testify as to judicial acts, is violation of due process.

VI. Representation by the Attorney General is not a matter of right, particularly where it creates a conflict between the statutory duty to prosecute crime and the defense of the person accused.

ARGUMENT

I.

Petitioner is entitled to review because the courts below have flouted basic precedents of justice to deprive her of constitutional rights, including free speech, petition and due process.

Petitioner seeks review of two cases, Appeal No. 20,181, *Powell v. Committee on Admissions and Grievances*, affirming disbarment in the District Court, and No. 20,544, *Powell v. Holtzoff*, affirming dismissal of an action in defamation, on the grounds the Court of Appeals has so departed from recognized precedents and norms of justice and has sanctioned

such departure in the District Court, by which Petitioner has been deprived of rights of free speech and of petition to the Government for redress of grievances, and the right of due process and a fair trial, so as to warrant review and reversal by this Court. The record conclusively shows the courts below flouted basic principles of justice and honesty to reach a preconceived, false conclusion, without supporting facts, to conform to their prejudices.

Amendments Involved.

Amendment I (p. 4) prohibits Congress from passing laws infringing upon certain basic rights "retained by the people," specifying, among others, freedom of speech and freedom of petition. Retention by the people implied in Amendment I is confirmed in *Amendment IX* (p. 4). Other amendments supplement the guaranty against infringement of these rights. *Amendment V* (p. 4) fortifies the protection of these rights in legal proceedings through "due process." *Amendment VII* (p. 4) protects the right to a fair and equitable trial according to the common law.

The right to petition the Government for redress of grievances in a legal proceeding is basic to free government. Necessary to the effective exercise of the right of petition is freedom to speak the truth, including what one reasonably believes to be true, free of duress and fear. The reason for the privileges and immunities and procedural rules summarized in the phrase "due process of law" is to reach the truth through fair trial, not to circumvent the truth through artifice.

II.

Affirmance of disbarment deprives Petitioner of free speech and the right of petition through the courts, and of the right to practice her profession in violation of due process and a fair trial, by duress.

Petitioner (Respondent-appellant below) at all stages of the proceedings has presented irrebuttable evidence, judicially noticed by the court, showing substantial positive proof in the record of the truth and foundation in fact of her complaint addressed to the Attorney General in *Powell v. Katzenbach,* 123 U.S. App. D.C. 250, 356 F.2d 234 (1965), cert. denied 384 U.S. 906. rehearing denied 384 U.S. 967 (1966), alleging that two judges, after repeated notice of error, persisted in misrepresentations of material relevant facts in the records before them. It was shown that these misrepresentations were made at the instance of a bank and its attorneys for the purpose and with the effect of perpetrating fraud on a trust committed to the bank's custody, and in flagrant disregard of the facts reflected in the record. This record was before the Court in the trial brief submitted by the petitioner (Respondent-appellant below), incorporated in the appeal as Supplemental Appendix, and is part of the record certified to this Court, which contains as Appendix B a detailed analysis, with cross reference to the statements of the judges and the judicially noticed records misrepresented by them, in *Lucy Powell v. Diana Kearny Powell, Owen Bullitt Powell, and George Cuthbert Powell,* Civil Action No. 4051-55, an action for appointment of a successor trustee. In this case the successor trustee, after termination of the trust by the death of the trust beneficiary, successfully contested disposition of the vested remainder to the

remainderman in being on the ground estates of deceased remaindermen had received an indefeasible remainder that took precedence over the title vested in the trustee and over its own uncontested appointment, to render void the vested interest of the remainderman in esse. On appeal, *Powell v. National Savings and Trust Company*, (1961) 111 U.S. App. D.C. 290, 296 F.2d 412, cert. den. 368 U.S. 946, 7 L. Ed.2d 343, 82 S.Ct. 387, rehearing denied 368 U.S. 1005, 7 L.Ed.2d 547, 82 S.Ct. 597; *Powell v. National Savings and Trust Company*, (1963) 114 U.S. App. D.C. 269, 314 F.2d 274, cert. den. 379 U.S. 920, rehearing denied 379 U.S. 984; *Powell v. National Savings and Trust Company*, No. 18,292, decided May 19, 1964, cert. den. 379 U.S. 920 (1965), rehearing denied ___ U.S. ___ (1965).

No explanation to this was offered, either in the Judgment of Affirmance or in the Judgment of Disbarment, which completely exclude from consideration the record before the Court. The finding that the Complaint to the Attorney General was false and unfounded is without an iota of corroboration in the record.

III.

The sole purpose of the disbarment was to induce suppression of the facts and the right to seek redress through petition to the Attorney General, by duress, in violation of Amendment One.

Disbarment has been used as a form of censureship.

Disbarment was used to suppress by means of duress Petitioner's (Appellant-defendant) right to free speech in presenting facts of record, and to

petition in her formal pleading for the assistance of the Attorney General in redressing the wrongs, not only against her but also constituting criminal offenses against the United States in obstructing justice and collusion in fraud. *Powell v. Katzenbach, supra.* Also see *United States v. Manton, et al.,* (2d Cir.) 107 F.2d 834, cert. den. 309 U.S. 664; *Dennis et al. v. United States,* 302 F.2d 5, 160 F.Supp. 787, 346 F.2d 10, ___ U.S. ___; *Lutwak v. United States,* 344 U.S. 604; *Braatelien v. United States,* 147 F.2d 888; *Hammerschmidt v. United States,* 265 U.S. 182; *Glasser v. United States,* 315 U.S. 60.

This is the essence of the right to free speech and the right of petition, afforded even to admitted subversives, *Stromberg v. California,* 283 U.S. 359, 75 L.Ed. 1117, 73 A.L.R. 1484, 51 S.Ct.R. 3332 (1931), and those whose factual basis for charges of corruption against officials are debatable. *Near v. Minnesota,* 283 U.S. 697, 75 L.Ed. 1357, 51 S.Ct. 625.

This Court has held under Amendment I that the right to petition the courts cannot be handicapped, nor the right of individuals and the public cannot be infringed in any way by invoking the power to regulate the professional conduct of attorneys. *Brotherhood of R.R. Trainmen v. Va. ex rel. Va. State Bar,* Va. (1964) 84 S.Ct. 1113, 377 U.S. 1, 12 L.Ed.2d 89, rehearing denied, 84 S.Ct. 1625, 377 U.S. 960, 12 L.Ed. 2d 505.

The right of a citizen, as well as a group of citizens, to petition for redress of grievances was upheld in *Kelly v. Page,* (C.A. Ga. 1944) 335 F.2d 114.

The disbarment violates Petitioner's right to freedom of speech defined by this Court as freedom to tell the truth and comment fairly on the facts. *Sweeney v. Schenectady Union Publishing Co.,* (CCA N.Y. 1941)

122 F.2d 288, affirmed 62 S.Ct. 1031, 316 U.S. 642, 86 L.Ed. 1727, rehearing denied 62 S.Ct. 1266, 316 U.S. 710, 86 L.Ed. 1776. See also *Garrison v. La.*, (1964) 85 S.Ct. 209, 379 U.S.64, 13 L.Ed.2d 125.

The authorities have cited this court as holding that the right to practice is a substantial right that cannot be taken away arbitrarily. *Ex parte Bradley*, 7 Wall (U.S.) 364, 19 L.Ed. 214; *Ex parte Wall*, 107 U.S. 265, 27 L.Ed. 522, 2 S.Ct. 569, and cited cases. This right has been held to be protected by Amendment V. *Dillon v. United States*, D.C.Or. 1964, 280 F.Supp. 487, reversed on grounds 346 F.2d 633.

No showing has been made that petitioner's Complaint to the Attorney General in any way prejudiced the administration of justice. No foundation was given for the finding that her statement was false or to rebut the evidence consisting of the judicially noticed record which she produced to support the truth of her statement. The only evidence produced by the Committee were general denials by the witnesses, without corroboration or an opportunity to impeach and the one perjured statement, subject of the related case sought to be reviewed, volunteered by the witness, while no question was pending and after the witness had been proffered for cross-examination, that the complaint to the Attorney General charging this witness with corruption was deliberately false. (RJA 1-2). It was Petitioner's right and duty to expose this corruption to the proper authority, under the Canons of Ethics. (R-BR-6).

The perjury of this testimony was impliedly admitted by the defense of privilege in the related case here sought to be reviewed, equivalent to confession and avoidance. Further gross errors of fact by this witness in his Answer suggest his mental deterioration and incompetence.

It is therefore plain that the disbarment was not to protect the administration of justice, but to protect the corrupt individual from exposure of his misconduct in office, an attempt to induce Petitioner under duress to "recant," a term suggesting her Complaint to the Attorney General amounted to heresy.

IV.

Petitioner has been denied due process of law by exclusion of the record proving the truth of her statements from practical consideration by the Court.

Although 72 pages (App. A and B) of uncontroverted and judicially noticed records, proving the truth of petitioner's (Appellant-defendant) Complaint to the Attorney General, were before the Courts below, the finding of fact completely excluded them from practical consideration, stating the allegations "were false and scandalous and were made by the respondent (Petitioner) without justification or foundation in fact." The conclusion of "professional misconduct of the highest magnitude and conduct clearly prejudicial to the administration of justice" (App. 10) was drawn from this finding and not from all of the evidence before the Court.

This is the most fundamental lack of due process, destroying the efficacy and purpose of all other rights, including even the right to a trial itself, when the court, after admitting the evidence, for all practical purposes, excludes it from consideration, in order to reach a preconceived conclusion, based on bias and favoritism and not upon facts and the record.

The practical suppression of the record (R) and use of the process of disbarment in an attempt to extort an admission of guilt, nd withstanding the fact

the suppressed data plainly prove innocence, goes to the very heart of denial of due process and a fair trial, guaranteed by several Amendments to the Constitution, An attorney, once acquiring the right to practice, may only be deprived of it through judicial exercise of due process. *Dillon v. United States* (D.C. Or. 1964) 280 F.Supp. 487, reversed on other grounds 346 F.2d 633. This Court has held that the judicial department of government is necessarily governed in the exercise of its functions by the rule of due process. *Hovey v. Elliott,* N.Y. 1897, 17 S.Ct. 841, 167 U.S. 409, 42 L.Ed. 215.

All rights under the Bill of rights extend to residents of the District of Columbia. *Davidson v. U. S.,* 96 U.S. 97, 24 L.Ed. 618; *Moses v. U. S.,* 16 App. D.C. 428, 50 LRA 532; *State v. Cutshell,* 110 N.C. 538, 15 S.E. 261, 16 LRA 130; *Poulsen v. Portland,* 16 Or. 450, 19 P. 450, 1 LRA 673. *Hirsh v. Block,* 267 F. 614, 50 App. D.C. 56, 11 ALR 1238, cert. den. *Block v. Hirsh,* 41 S.Ct. 13, 254 U.S. 640, 65 L.Ed. 452, and reversed (1921) 41 S.Ct. 458, 256 U.S. 135, 65 L.Ed. 865, 16 ALR 165. The supervisory powers of the Supreme Court over federal proceedings are even greater than over state proceedings. *Fay v. People of State of N. Y.,* 67 S.Ct. 1613, 332 U.S. 361, 91 L.Ed. 2043, rehearing denied 68 S. Ct. 27, 332 U.S. 784, 92 L.Ed. 367, cert. denied 68 S.Ct. 28, 332 U.S. 787, 92 L.Ed. 367.

This Court has held that "due process of law" goes beyond mere forms of procedure and protects substantial rights. *Federal Communications Commission v. WJR, the Goodwill Station,* 69 S.Ct. 1097, 337 U.S. 265, 93 L.Ed. 1353. *Anderson Nat. Bank v. Luckett.* 64 S.Ct. 599, 321 U.S. 233, 88 L.Ed. 692, 151 ALR 824.

Denial of Petitioner's request for review of this ground would imply that petitioner would have to make

a false confession of guilt under the threat of disbarment in order to be entitled to the rights afforded confessed criminals. This is in a proceeding instituted to protect from criminal prosecution a public official who has shown himself not to be above perjury and whose admitted collusion in the blackmail perpetrated by the disbarment proceeding against petitioner (respondent-appellant) is a matter of record.

The only case cited by the Committee as precedent for its action is *Duke v. Committee on Grievances*, 82 F.2d 890, cert. den. 56 S.Ct. 751, 298 U.S. 662, 80 L.Ed. 1387. Whatever the merits of that case, tried in 1936, it is not binding on the Supreme Court, nor does it restrict its power to supervise flagrant violations of rights guaranteed by the Constitution to effective freedom of speech and of petition, to a fair trial according to the rules of law and equity in determining the guilt or innocence of the accused attorney, nor the right to review by this Court. Reference is made to *Corpus Juris Secondum* and *American Jurisprudence 2d*, each citing this court, as authority that disbarment is not to be exercised in an arbitrary or despotic manner (*Ex parte Bradley*, 7 Wall (U.S.) 364, 19 L.Ed. 214), and restricting it to cases where an attorney has proved himself unfit to be entrusted with the duties belonging to the office of an attorney for the protection of the public and proper administration of justice. *Ex parte Wall*, 107 U.S. 265, 27 L.Ed. 522, 2 S.Ct. 569.

Also cited are the Canons of Professional Ethics (R-BR-5-6) and the duty imposed by them to expose fraud and deception, particularly in fiduciary relationships; see Canon One (R-BR-5). See also Wide, Raymond L.: *Legal Ethics* 1966.

Petitioner submits that the power of supervision of this Court of such unreasonably arbitrary and capricious denial of due process in a federal court calls for exercise of this Court's power of supervision to insure due process of law and effective right to a fair trial. *Minski v. United States*, 131 F.2d 614, affirmed 63 S.Ct. 1241, 319 U.S. 463, 87 L.Ed. 1519, cert. denied 63 S.Ct. 1431, 319 U.S. 775, 87 L.Ed. 1722.

V.

Summary judgment without hearing on the issue of whether the defamatory *per se* statements were privileged when made as a witness after declining to testify as to judicial Acts, is violation of due process.

The second case, No. 20,544, *Powell v. Holtzoff*, grows out of the defendant's perjured statements at the disbarment trial, when he made the comment:

> A. Well, I will make the same comment: That the entire paragraph is a statement of falsehoods except the statement that I rendered an oral decision in that action.
>
> Q. Thank you, sir. You may cross-examine.
>
> The Witness: I might add this: That it is a statement of deliberate falsehoods.

On page 15 of the transcript, Judge Holtzoff (the witness) made the following statement on questions put to him on cross-examination:

> The Witness: With all respect to the Court, I am sure that the Court will approve my action in declining to answer any questions concerning my judicial actions.

The question to be decided was whether the statements made by Judge Holtzoff as a witness, and after he had declined to testify as to his judicial acts, were outside the scope of his judicial functions.

This substantial question was the only issue. It could only be decided upon the facts as they exist in this case, which are shown in the disbarment, which also prove in the detailed analysis of the record (RB 1-6) that the statements of the witness are perjured.

Truth of the defamatory statements was not pleaded and, therefore, is waived under Rule 12 (h), F.R.Civ.P. In effect, perjury is admitted. The damage is obvious to Petitioner-plaintiff's professional standing as well as her reputation in the community. The arbitrary dismissal without hearing deprives her of due process in seeking a remedy for the tacitly admitted wrong. The facts are clearly different from cited cases upholding immunity. The summary affirmance is clearly at variance with the general rule as stated in *Corpus Juris Secondum* and *American Jurisprudence* and the cases cited in these authorities, that the defamatory statements, to be privileged, must have been made in the exercise of, or related to, a judicial function. It is pointed out that the disbarment was not for "contempt of court." The statement was a formal pleading addressed to the Attorney General, an officer of the Executive Branch of the Government, relating to a matter within his competence, a criminal offense which it was his duty to prosecute. The defamatory statement of the witness was, therefore, made to prevent the discovery of his (the witness) implication in the crime, as shown in the part of this petition relating to the disbarment. (p. 11-14)

VI.

Representation by the United States Attorney is not a matter of right, particularly where it creates a conflict between the statutory duty to prosecute crime and the defense of the person accused.

The implication of the United States in the defense of the defendant is a ruse to evade prosecution for crime. No absolute right exists and has not been claimed even where the act of a judge on the bench, or in reference to a matter before him as a judge, was involved. *Owen v. Kronheim,* 113 U.S. App. D.C. 81, 304 F.2d 957 (1962); *O'Bryan v. Chandler,* 352 F.2d 987 (10th Cir. 1965); *United States v. Manton,* 107 F.2d 834 (C.A. 2), cert. denied 309 U.S. 664; *Braatelien v. United States,* 147 F.2d 888.

Not even the Congress has gone so far in its pending litigation with Adam Clayton Powell, a matter clearly within its official functions.

The implication of the United States Attorney raises a grave question of collusion in suppressing incriminating facts in the record. This is a matter of serious concern that calls for review by this Court.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgments below should be certified to this Court, and reversed.

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Petitioner

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